

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

JERI A. BLISS, JENNIFER CONNOR,)	
DALE L. DOOGS, HAROLD E.)	
FENDLEY, JR., ROBERT MATHIAS,)	
MARK ROCCO MARINO, JOHN M.)	
MOSS, III, THURMAN S. NORVILLE,)	
JR., MARGARET S. OBERFELL, JOHN)	
DANIEL PERRY, and DENISE)	
TURNBULL,)	
Plaintiffs,)	
)	3:06-cv-0024-RLY-WGH
vs.)	
)	
BRISTOL-MYERS SQUIBB COMPANY,)	
MEAD JOHNSON & COMPANY,)	
BRISTOL-MYERS SQUIBB COMPANY)	
RETIREMENT INCOME PLAN,)	
BRISTOL-MYERS SQUIBB COMPANY)	
SEVERANCE PLAN, and BRISTOL)	
MYERS SQUIBB COMPANY)	
COMPREHENSIVE MEDICAL PLAN,)	
Defendants.)	

**ORDER ON DEFENDANTS' AMENDED MOTION TO DISMISS PLAINTIFFS'
COMPLAINT and DEFENDANTS' REQUEST FOR ORAL ARGUMENT**

On January 27, 2006, Plaintiffs Jeri A. Bliss, Jennifer Connor, Dale L. Doogs, Harold E. Fendley, Jr., Robert Mathias, Mark Rocco Marino, John M. Moss, III, Thurman S. Norville, Jr., Margaret S. Oberfell, John Daniel Perry, and Denise Turnbull, filed suit against Defendants, Bristol-Myers Squibb Company, Mead Johnson & Company, the Bristol-Myers Squibb Company Severance Plan, the Bristol-Myers Squibb Company

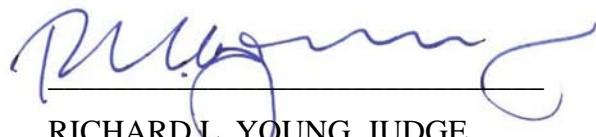
Retirement Income Plan, and the Bristol-Myers Squibb Company Comprehensive Medical Plan, alleging a denial of benefits claim under 29 U.S.C. § 1102 (a)(1)(B) of the Employee Retirement Income Security Act, and federal common law claims of equitable estoppel, breach of contract, and spoliation of evidence. Defendants move to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The court, having read and reviewed Plaintiffs' motion and the applicable law, now finds that Defendants' motion should be **DENIED** in part. The court finds Plaintiffs have adequately alleged the existence of an oral Take Over Benefit Plan ("Top Hat Plan"). The court further finds that the issues raised in Defendants' motion are fact-sensitive, and thus more properly raised on summary judgment. Plaintiffs concede, however, that their request for interest, consequential damages, and/or punitive damages is without merit. To that extent, Defendants' motion is **GRANTED**.

Defendants also request oral argument on their motion to dismiss. The court, having **DENIED** in part Defendants' motion to dismiss, now **DENIES** Defendants' request for oral argument as **MOOT**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Amended Motion to Dismiss is **GRANTED** in part, and **DENIED** in part.

IT IS FURTHER ORDERED that Defendants' Request for Oral Argument is **DENIED** as **MOOT**.

SO ORDERED this 18th day of July 2006.



RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Electronic Copies to:

Nicole A. Eichberger
PROSKAUER ROSE LLP
neichberger@proskauer.com

Michael C. Peek
CHRISTOPHER & TAYLOR
mickpeek@iquest.net

Phillip W. Preis
PREIS GORDON APLC
phil@preislaw.com

Howard Shapiro
PROSKAUER ROSE LLP
howshapiro@proskauer.com

Kenneth J. Yerkes
BARNES & THORNBURG LLP
ken.yerkes@btlaw.com